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Judge tosses environmental groups' lawsuits over freight rail service

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A Marin County judge has dismissed a pair of lawsuits by environmental groups demanding a more rigorous study of resuming freight rail service along the North Coast.

In a decision disclosed this week, Judge Roy O. Chernus upheld his earlier tentative ruling saying that federal law trumps state laws. That means Friends of the Eel River and Californians for Alternatives to Toxics could not sue to force the North Coast Railroad Authority to perform more detailed environmental analysis of its plan to restore freight service from Napa to Willits.

"A huge dark cloud has been lifted," NCRA Executive Director Mitch Stogner said. "Now it's time to get to the business of running freight trains."

Trains run about twice a week between Napa and Windsor, but the NCRA said the 2-year-old lawsuit had held back its effort to recruit new clients for the existing service and to raise the estimated \$5 million to rehabilitate the tracks in the next section of line it hopes to open, between Windsor and Cloverdale.

The two environmental groups had argued the agency's 2011 environmental impact report, prepared under provisions of state law and paid for by \$3 million in state funds, should have considered additional factors, including toxic substances that might be stirred up by construction and rail operations. They also said the agency should have examined all 316 miles of rails it uses, all the way to Humboldt Bay, not just the southern 142 miles up to Willits, the only portion NCRA says it intends to open in the foreseeable future.

Patty Clary, executive director of Californians for Alternatives to Toxics, said it was too early to decide whether to pursue an appeal. "We're very disappointed with the judge's decision, of course, but we haven't decided what to do next," she said.

She pointed to recent news that contaminated soil under a bike path next to railroad tracks in Santa Rosa will cost \$270,000 to clean up because of toxic chemicals as evidence that her organization was right to challenge the NCRA's study of chemicals along the tracks. She said the judge had removed a powerful tool to protect the public from chemical contamination when he said her organization couldn't use state environmental law to challenge the rail project.

NCRA has long argued that it is not bound by state law; it argued that the EIR it prepared was advisory, intended to provide transparency to the public and to form the basis of the agreement with the contractor that runs the trains, Northwestern Pacific Railroad.

Until this latest ruling, however, NCRA had difficulty making its argument in court. In December, another Marin County judge agreed that federal law preempted state law, but said that NCRA had gone so far in subjecting itself to state environmental law that it was too late to change its position. The authority had accepted state funding to repair the line as far as Windsor and agreed to settle an earlier EIR-related lawsuit with the city of Novato.

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Chernus disagreed for technical reasons, saying it should have been up to state officials to hold NCRA to past promises, if any, to abide by state law and not outside groups such as the environmental groups.

Lawyers for NCRA argued it had never promised to subject itself to state law. Chernus did not address the details of the environmental groups' claims otherwise since he concluded that the groups had no legal basis to enforce such promises anyway.

Chernus issued his tentative ruling on May 7, but held back a final decision while he considered detailed counter arguments that attorneys for the two groups made the next day.

In the end, he appeared unmoved by those arguments.

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